

Graphic Communications Union Local 51, Graphic Communications International Union, AFL-CIO-CLC and Arlington Press, Inc. and Graphic Communications Union Local 23A, Graphic Communications International Union, AFL-CIO-CLC. Case 29-CD-414

September 30, 1993

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed by the Employer, Arlington Press, Inc., alleging that the Respondent, Graphic Communications Union Local 51, Graphic Communications International Union, AFL-CIO-CLC (Local 51), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Graphic Communications Union Local 23A, Graphic Communications International Union, AFL-CIO-CLC (Local 23A). The hearing was held June 8, 1993, before Hearing Officer Sandra B. Rattner. Thereafter, the Employer filed a brief.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, Arlington Press, Inc., a New York corporation whose principal place of business is in Brooklyn, New York, is engaged in the wholesale production of printed pharmaceutical labels and package inserts. During the past year, the Employer has purchased and received at its Brooklyn, New York facility goods, supplies, and services valued in excess of \$50,000 directly from entities located outside the State of New York. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that Local 51 and Local 23A are labor organizations within the meaning of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer has had collective-bargaining agreements with both locals for many years. Local 51 currently represents the pressmen, who operate all the printing presses at the Employer's facility. Local 23A represents two employees working in the pressroom as porters.

In May 1991, the Employer purchased a Heidelberg two-color press. The Employer continues to operate a number of other presses in its pressroom. At the time of the Heidelberg press purchase, the Employer anticipated that there would not be enough work to keep the press operating on a full-time basis. The Employer decided to assign a pressman and a press assistant to operate the Heidelberg press. Each of these employees had to be able to operate other presses when the Heidelberg was not operating. Accordingly, the Employer hired a new employee, who became a Local 51 member, to be the pressman and assigned an existing employee, a Local 51 member, to work as press assistant. Eventually, the Employer hired a third pressman to assist on the Heidelberg press, returning the initially assigned employee to a regular pressman's job on a rotary press. The two employees who operate the Heidelberg press also operate other kinds of presses when the Heidelberg press is down.

In late April/early May 1993,¹ a Local 23A official visited the Employer's facility, discovered that the Heidelberg press had been purchased, and asserted that the assistant pressman work on the Heidelberg press should be assigned to a Local 23A member. After the Employer informed Local 51 of Local 23A's claim, Local 51, in a letter to the Employer dated May 13, threatened to strike if the work on the Heidelberg press was reassigned from Local 51 to Local 23A. The Employer filed the instant 8(b)(4)(D) charge on May 18. Local 23A, in a May 28 letter to the Employer, asserted its jurisdiction over the Heidelberg press assistant.

B. Work in Dispute

The parties stipulated that the work in dispute is the assistant's work on the Heidelberg two-color offset press at the Employer's Brooklyn, New York facility.

C. Contentions of the Parties

The Employer contends that the disputed work should be awarded to employees represented by Local 51 on the basis of the Employer's preference and past practice, economy and efficiency of operations, area practice, and relative skills of the employees involved. Local 51 agrees with the Employer's contentions.

Local 23A asserts that the work in dispute should be assigned to employees represented by Local 23A on the basis of its collective-bargaining agreement with the Employer, the Employer's past practice, and industry practice.

D. Applicability of the Statute

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must

¹ All subsequent dates are in 1993 unless indicated otherwise.

be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated, and that the parties have no agreed-upon method for the voluntary adjustment of the dispute.

As noted above, after the Employer informed Local 51 of Local 23A's claim for the work, Local 51 threatened to strike the Employer's plant if the work were reassigned to employees represented by Local 23A. Based on the foregoing, we find reasonable cause to believe that Local 51 violated Section 8(b)(4)(D) of the Act.

The parties agree that there is no provision for the voluntary resolution of the instant dispute which would bind all three parties to the dispute. Accordingly, we find that the dispute is properly before the Board for consideration.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no claim that either of the Unions has been certified by the Board to represent the employees of the Employer.

The Employer currently has collective-bargaining agreements with Local 51 and Local 23A, each of which is effective until March 2, 1995. Identical language appears in each contract by which the Employer recognizes each Union as the representative of "all employees in the pressrooms of the [Employer] engaged as printing pressmen as listed in the wage scales contained in this Contract." Each contract's wage scale lists the classifications of pressman and press assistants. Both contracts specify that a two-color press shall be operated by one pressman and one assistant.

Because the Employer currently has collective-bargaining agreements with both Local 51 and Local 23A that each appear to cover the work in dispute, we find that this factor does not favor awarding the work in dispute to personnel represented by either Local 51 or Local 23A.

2. Employer preference

The Employer prefers that Local 51-represented personnel be assigned the work in dispute. We find, there-

fore, that this factor favors awarding the work in dispute to Local 51-represented personnel.

3. Area and industry practice

Graphic Communications International Union favors "front to back" organizing in the printing industry, meaning that one local of the International represents all the employees in one shop. Local 51 has a number of contracts in the New York City area, where it represents pressmen and press assistants. However, Local 51 and Local 23A have a number of jointly represented contracts in the New York City area where Local 23A represents press assistants on two-color presses such as the Heidelberg. We find that this factor is inconclusive.

4. The Employer's past practice

The Employer testified that Local 51 has represented pressmen for at least the last 20 years. From about 1980 to 1986, the Employer operated a two-color offset press with a Local 51-represented pressman and a Local 23A-represented assistant. When this machine was sold, the assistant was laid off. In the mid-1970s, the Employer operated a multilith single-color offset press with a Local 23A-represented assistant. The assistant was terminated in 1976. Subsequently, that press was only used occasionally and operated by Local 51-represented personnel.

Since the Employer purchased the Heidelberg two-color press in November 1991, it has been operated exclusively by Local 51-represented employees.

We find this factor inconclusive.

5. Relative skills

Local 51 and Local 23A assert that its respective personnel are qualified to perform the work in dispute. The Employer argues that the record does not support Local 23A's claim. We find this factor inconclusive.

6. Economy and efficiency of operations

The Employer prefers that the Heidelberg assistant pressman be a Local 51-represented employee because the Heidelberg press is only used on a part-time basis and, during the time when it is not in operation, that employee can and does operate other presses in the Employer's pressroom. If a Local 23A-represented employee were the assistant pressman, the Employer claims there is no other suitable work for that employee to do when the Heidelberg is not operating, because the Employer has all the porters it needs and because a Local 23A-represented employee would not be permitted to operate other presses. Thus, the Employer argues that assigning the work to a Local 23-represented employee would be less economical and efficient because it would require hiring another pressman to cover the other necessary presswork.

We find that this factor favors awarding the work in dispute to Local 51-represented personnel.

Conclusion

After considering all the relevant factors, we conclude that employees represented by Graphic Communications Union Local 51, Graphic Communications International Union, AFL-CIO-CLC are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and economy and efficiency of operations.

In making this determination, we are awarding the work in dispute to the Employer's employees rep-

resented by Local 51, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of the Employer represented by Graphic Communications Union Local 51, Graphic Communications International Union, AFL-CIO-CLC are entitled to perform the assistant's work on the Heidelberg two-color offset press at the Employer's Brooklyn, New York facility.